

# INSTITUTION OF MATRIMONIAL PROPERTY – DOWRY ON THE STAGE OF MODERN EUROPE

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## Abstract

The institution of matrimonial property – dowry still exists in the EU Council Directive of 24 June 1988 (88/361/EEC) referring to the principle of free movement of capital and is a link to the Latvian Civil Law and shows the existence of the institution of dowry in European law. The study shows the background and historically evolving nature of dowry institution and evaluates the need of it in the contemporary Civil Law of Latvia, tries to answer why such an archaic legal institution is still present in the modern law, analyses it through the gender equality framework and explain regulatory failure in this context, offers solutions for this problem from the theoretical and practical perspectives. In order to understand the topic's complexity, the article gives a short insight from the historical perspective examining the continuities and discontinuities in this social institution in different regions and eras – starting from ancient world to nowadays: from the time when the king of Babylon Hammurabi ruled up to the modern Southeast Region societies and in the Baltics. The issue has not been analyzed more widely before, there is no common understanding how it corresponds to provisions of the European Economic Community's gender equality law and what the opinion of general public in Latvia is on this subject.

**Keywords:** Dowry, Matrimonial property, Human rights,

## Introduction

Probably very few will question that the modern law practice in Latvia about dowry regulation is not something that is in high demand. The redemption and dowry are today's uncharacteristic relics from the past. In reality this family law institution of marriage practice from ancient times is not only a tradition remaining in our minds, but even as a separate institution fixed in the Civil Law of Latvia (hereafter CL). The legal meaning of word "dowry" in Internet resources shows no significant responses, suggesting that this archaic law institution in European legal space is either sunk or has disappeared. This raises the question about the dowry institution and its role and place in contemporary continental modern law. Clarity on this issue would also be required for practical reasons, because the alleged breach of gender equality issue may have significant implications for national interests.

### Short historical overview

In 1993 the CL from 1937 was restored in to force, including The Family Law Part<sup>55</sup>. Some parts of CL were substantially revised, however, left unchanged and retained were those

<sup>55</sup>Civillikums, <http://www.likumi.lv/doc.php?id=90223>, The Civil Law ([www.vvc.gov.lv](http://www.vvc.gov.lv)), Accessed: 2011-02-02 The Civil Law of Latvia CHAPTER 1, Marriage, SUB-CHAPTER 4, Property Rights of Spouses, Lawful Property Relations of the Spouses, has three articles for dowry: 111-113.

Article 111. A dowry, which, in the event of marriage, parents, kin or other persons have endowed to a woman, shall be the property of the wife even if it has been given to the husband.

Article 112. For a promise to give movable property of more than five hundred lats in value or immovable property as a dowry to be binding, it must be expressed in writing.

Fulfilment of a promise of dowry may be claimed by the wife herself or, on her behalf, by the husband; in addition, the right to bring an action for provision of the dowry is prescribed two years after the entering into of the marriage or the day specified for the provision of the dowry.

institutions which were traditional for Latvians, for example, engagement and dowry. As it happens more than 10 years before Latvia became an EU member state, it can't be notified that we have the rule, because the COUNCIL OF THE EUROPEAN COMMUNITIES DIRECTIVE of 24 June 1988 for the implementation of Article 67 of the Treaty (88/361/EEC), which was adopted to ensure European Economic Community the internal market area without internal frontiers, without prejudice to other provisions of the Treaty, providing the free movement of capital, Annex I, Article 1 (capital movements), Section XI - Personal capital movements - Part C, which includes a dowry, has.<sup>56</sup> So the Directive is a link to the CL and shows the probability of its existence in European law.

The dowry institution has an ancient origin and it has existed in many legal systems all over the world. Nevertheless currently de facto it exists mostly in Africa, America, South Asia. In Europe only among large immigrant communities from Asian, South-East Asian and Arabic countries.

The historical evidences of different nations and historical sources of information, including customs and habits, represents the various stages of institutions in their historical way of development, makes us understand the ancient society's way of life. This can also be said about dowry which in all times is seen as a special tool – an institution for women or wives, as less protected family members, as an instrument for their legal status regulation and support, of course, with some exceptions. In most cases, especially in patriarchal societies, the view is that a woman in the family must be protected and the dowry institution was for balance and to provide an environment for the new family to be economically independent and stable. The most common use for dowry were two functions: it served as a wife's contribution to the newly established family, as the wife's part for the families' property, which could be used by all family members,<sup>57</sup> and in a case of a divorce or husband's death, served as a wife's or widow's protection mechanism against the possible ill-treatment by husband or husband's family, and thereby provides a security for her future life, so it could be considered as a special instrument for wife's or widow's defence remedy.

The definitions on dowry institution are largely influenced by the system of the society, and the period in which it was formed.

In Latvian folk songs (in latvian-dainas) there are lot of evidences<sup>58</sup> showing the role of dowry and the decision from them is that if the dowry was prepared by women themselves, the women's virtue was assessed on a housewife's capabilities and usually it was checked at the wedding, when dowry was evaluated by the future husband's family representatives, and at this moment, in order to promote further relationship, the future wife donated some generous dowry to her future husband's relatives<sup>59</sup>. Not only Latvian folk songs contained

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A dowry may not be claimed if the marriage has been entered into without the knowledge or assent of the person who has promised the dowry.

Article 113. Rights, which are based on the promise of a dowry may not be assigned to a third party; these rights may devolve, by way of inheritance, only to the children of that marriage for the entering into of which the promise of dowry was given, and to the husband who has been left with the children.

<sup>56</sup> Council Directive of 24 June 1988 for the implementation of Article 67 of the Treaty (88/361/EEC), [1988] OJ, L 178/5

<sup>57</sup> The Institution of Dowry in India: Why It Continues to Prevail Author(s): Sonia Dalmia and Pareena G. Lawrence Source: The Journal of Developing Areas, Vol. 38, No. 2 (Spring, 2005), pp. 71-93 Published by: College of Business, Tennessee State University Stable URL: <http://www.jstor.org/stable/41929>, Accessed: 2011-06-05

<sup>58</sup> Through in written form gathered dainas /what is a little part of them/there are 3597 dianas where dowry is mentioned:<http://www.dainuskapis.lv>, pūr, Accessed:2011-02-20; <http://www.marasloks.lv/public/?id=32&ln=lv>, Agnija Saprovska, Dainu Dievs - kā latviešu tautas garīguma ideāls, Accessed: 2011-09-11

<sup>59</sup> <http://www.liis.lv/folkloru/gimen/origin/ved.htm>, Accessed: 2011-16-02

confirmation of dowry. We can find the concept of dowry in the ancient Balts'<sup>60</sup> Peasant Rights too: "Kurshi"<sup>61</sup> (Curonian) Peasants' Law" (Latvian - Kuršu zemnieku tiesības) codified in the 13th century and later extended to Zemgale. <sup>62</sup>"Kurshi Peasants' Law" contains the rules that sons as heirs, "...must take care of their sisters' dowry" (Article 27b), they were obliged to give a part of their heritage to sisters when they married. At the same time it should be stressed that ancient Lithuanians were able to create their own state – Grand Duchy of Lithuania – and develop the civil law institutions on relatively high level that included the dowry as part of matrimonial property. The dowry is widely described in it and implemented in a quite different way, not only as the traditional norms for medieval Lithuania, regulated by

rules of Lithuanian Statutes (Statutes of the Grand Duchy of Lithuania - 1<sup>st</sup> version – 1529; 2<sup>nd</sup> version – 1566 and 3<sup>rd</sup> version - 1588). Nonetheless, Paragraph 12 of the Polish Constitution<sup>63</sup> of 1588 under the title "On Dowry of Sisters" stated that brothers are obliged to provide their unmarried sisters with the dowry and determined that the amount would be at their own discretion and on their conscience; however, taking into account the opinion of and acceptance by two relatives on the father's side and two on the mother's side. At the same time the Lithuanian Statute of 1588 indicates that the brothers are obliged to give ¼ of the property of their father to unmarried sisters (Part V, Article 3)<sup>64</sup>.

In some nations the care of dowry must to be taken by the future wife herself, in some - the bride's father, in others - the bride's family, or even the whole community. Jews, for example, had to give a certain minimum donation, which, if the father was unable to procure the woman, she was given from the whole Jewish community. The tradition of community to support newly married couples, a slightly altered form, has survived until the present day - a marriage ceremony, where guests from all those present at it (in terms of the local community) collect money for dowry - every guest has to put it into a hat and loudly announce the amount given. In the Middle East, a Jewish bride's legacy mainly was jewellery, which was given by both family sides. Jewellery served brides as a sort of insurance policy as we say nowadays for a rainy day - divorce, because the value of jewellery was truly remarkable. Wealthy women's wedding dresses sometimes were decorated with jewels literally from head to toe.<sup>65</sup>

Oregon State University's anthropological definition dictionary<sup>66</sup> states that dowry is the woman's shared part of her inheritance from the group at her birth, which is taken with her upon marriage.

<sup>60</sup> Endzelīns J., Baltu valodu skaņas un formas, Latvijas valsts izdevniecība, Rīgā, 1848., p.5.,7., see also: Čatverdzi S.K., Balti un ārieši, Rīga, Zinātne, 1990., ievads, p.41.

<sup>61</sup> <http://www.vaidilute.com/books/gimbutas/gimbutas-07.html>, *the Cours (the Couronians) inhabitants of Kursa (Courland)-an ancient Latvian tribe, Chapter VII, The Balts before the Dawn of History*, see also: <http://www.historyfiles.co.uk/KingListsEurope/EasternLivoniaCourland.htm> Accessed: 2012-08-04

<sup>62</sup> <http://www.zemgale.lv/eng/>, <http://www.vietas.lv/?id=3&p=11>, Zemgales Reģions, Accessed: 2012-08-04

<sup>63</sup> Term "Constitution" in medieval Polish – Lithuanian Commonwealth was used in the meaning of body of laws adopted by Seim (Parliament of Commonwealth) session. It was not Constitution in the modern sense of this word.

<sup>64</sup> Ibid., c.45

<sup>65</sup> <http://ldolphin.org/risk/ult.shtml>, Accessed: 2010-08-08, <http://www.infoplease.com/spot/dowries1.html#ixzz1EWDWxMDNDowries>, Jewish Brides Wore Their Dowries, The joining of money and marriage by David Johnson, <http://connection.ebscohost.com/c/articles/11306269/division-dowry-death-daughter-instance-negotiation-laws-jew>, Accessed: 2011-08-02, [http://faculty.ksu.edu.sa/amer%20elzanaty/The%20Englis%20Books/Encyclopaedia/Encyclopaedias%20Miscellaneous/Encyclopedia\\_of\\_Modern\\_Jewish\\_Culture.pdf](http://faculty.ksu.edu.sa/amer%20elzanaty/The%20Englis%20Books/Encyclopaedia/Encyclopaedias%20Miscellaneous/Encyclopedia_of_Modern_Jewish_Culture.pdf), Encyclopedia of Modern Jewish Culture, Abramson Glenda, pp. 67, Accessed: 2012-09-01

<sup>66</sup> [oregonstate.edu/instruct/anth370/gloss.html](http://oregonstate.edu/instruct/anth370/gloss.html)

The most common for the definition is that dowry is money, goods or property which a woman gives to her husband when she entered for marriage. Noble family daughters' dowry can consist of money and valuables, sometimes – land. So, more often the traditional understanding of this is that dowry is money or property that the bride brings in for a new family.

In the book "Understanding the age: from the 5<sup>th</sup> to the 15<sup>th</sup> century", the historical period for the definition of terminology, it is marked that a dowry is a present given to a new husband by the bride upon marriage and it could take the form of land, goods or money<sup>67</sup>, sometimes jewellery, and - rarely - land that accompanies the bride and is provided by the wife-givers. The dowry was also the entrance fee, gift for the monastery, when the nun or monk joined it<sup>68</sup>.

A different viewpoint is at All-Russian classification of economic activities in the chapter "Marriage Redemption"<sup>69</sup> where it is stated that the marriage of redemption is compensation for the dowry what the bride took for her new residence to furnish new family social life. Here, even it is said that redemption and a dowry are about the equivalent value interchange format between families. At the same time it is not excluded that the dowry has appeared later as the ransom, and was established at the time started from Nuclear (according to the DNA test results it is confirmed that the oldest of them were formed before 4600 years)<sup>70</sup> small family, which split off from the former family, moved on and started a separate life within a certain area which also was a precondition for the incurrence of dowry.

The ancient civilizations of Egyptians, Mesopotamians, Hebrews, Aztecs, Incas all of them used the bride price. The Germanic tribes, who date from 2000 BC and ruled western Europe from the 600 to 1000 AD, required bride's price for a marriage to be legal.<sup>71</sup>

Vancouver British Columbia University assistant professor of economics in Canada Siwan Anderson, believes that today, however, it is no longer possible to determine exactly when the dowry or ransom institutes were established or which of them was the first one, even though they are ethnographically recorded both at the beginning of our era, at the Bronze and Iron ages, when people had food from hunting, fishing and plant collection, and when the hunters' plant collectors and the community switched over to an independent, local life.<sup>72</sup>

However, it is true that the bride's redemption and the dowry at ancient times in all communities has an important role and its rational basis: parents were given some compensation for the loss of working hands, it served as a form of subsidiary for bringing up and educating the child, as well promoted the strengths of relationship between two new families<sup>73</sup>. For the ancient Latvians the bride's family sometimes also made payments for the other family, as a compensation for the loss of a family member. Redemption and dowry are

<sup>67</sup> <http://www.legal-explanations.com/definitions/dowry.htm>, Legal Resources in plain English, Legal-Ezplanations.com Home > Legal Definitions, Dowry, Accessed: 2010-12-09

<sup>68</sup> [essenes.net/index.php](http://essenes.net/index.php), Accessed: 2011-06-05

<sup>69</sup> [http://linai.lt/index.php?option=com\\_content&task=view&id=101&Itemid=50](http://linai.lt/index.php?option=com_content&task=view&id=101&Itemid=50), Общероссийский классификатор видов экономической деятельности ОК 029-2001 (КДЕС Ред.1) введен в действие постановлением Госстандарта РФ от 6 ноября 2001 г. N 454-ст Дата введения 2003-01-01, part "Брачный выкуп", Accessed: 2011-07-02

<sup>70</sup> <http://www.thefreelibrary.com/World's+earliest+nuclear+family+found+in+4,600-yr-old+grave.-a0199285736>, Accessed: 2011-18-02

<sup>71</sup> <http://www.econ.ubc.ca/asiwan/siwan-jep.pdf>, Anderson S., Journal of Economic Perspectives—Volume 21, Number 4—Fall 2007—Pages 151–174, Accessed: 2011-06-05

<sup>72</sup> [http://wn.com/bride\\_price](http://wn.com/bride_price), World news, Bride price, Accessed: 2011-06-05,

<http://www.econ.ubc.ca/asiwan/siwan-jep.pdf>, Journal of Economic Perspectives—Volume 21, Number 4—Fall 2007—Pages 151–174, Accessed: 2011-03-02

<sup>73</sup> <http://hubpages.com/hub/LoveForSale>, Love for Sale: Dowries and Bride Prices, The Bride Price Is A Turn About For The Groom, Accessed: 2010-08-04

referred in various ancient sources, such as the Bible - the Old Testament<sup>74</sup>, the Code of Hammurabi<sup>75</sup>, or the oldest monument of Greek fiction - Homer's epic "Odyssey", where Penelope insists on the marriage with redemption in accordance with the old tradition, while the groom's guests request to enter the marriage with a dowry after a new tradition, by Andrew Lang in a book "Homer and his Age", the 11 chapter "Notes of Change in the" Odyssey "" it is evaluated as the legal position - judicial instability of Penelope giving the bright description of the woman's place and role in the society and pointing out that it consists only as the fact that they could be used for physical needs and men's well-being.<sup>76</sup>

The dowry institute most of all flourished at medieval Europe when it became almost mandatory or a part of a marriage. In fact, at that time that meant that a woman without a dowry didn't even have a hope to get married. Therefore, one of the ways to punish a disobedient daughter was to take away the dowry. This tradition is described in W. Shakespeare's tragedy "King Lear" when after Cornelia's famous monologue: "You have begot me, bred me, loved me: I Return those duties back as are right fit, Obey you, love you and most honour you...Why have my sisters husbands if they say They love you all? ...Sure I shall never marry like my sisters to love my father all", she was deprived of the dowry.<sup>77</sup> Reduction of the role of the dowry, even tripled, in England, in the period when an aristocratic English woman faced increasing competition with women of different origin - namely noblewomen. Some similarities to this process were also observed in Renaissance Venice, where reductions of the role of dowry were caused because of increasing competition among senior noble clans, who due to the modernization and influences from economic development opportunities rapidly became wealthy and created new, competing

segments of society.<sup>78</sup> It is considered that in the 18<sup>th</sup> century Great Britain gradually became freer, and at the marriage negotiations the role of dowry decreased (with the exception of

higher order aristocracy). The processes at the 18<sup>th</sup> century in France were similar, when

competition between new bourgeoisie and the old nobility emerged. In the 17<sup>th</sup> century there were similar trends in northern Italy. Moreover, there may be other reasons, which played a role for the disappearance of dowry in continental European countries.<sup>79</sup> Siwan Anderson believes that the further explanation in reducing the dowry, was that it became obvious for parents giving dowry to daughters because they faced the fact that the sons who, as it was

<sup>74</sup> Mozes 22:28-29,24: 61, 34:12, Exodus 22:16-17, T.B.S. 217KINGSTON ROAD, LONDON, SW 19 3NN ENGLAND, pp.214

<sup>75</sup> Blūzma V., Zemītis G., Osipova S., Ārvalstu tiesību vēstures avoti. Rīga, "Biznesa augstskola Turība" SIA, 2007., pp. 6-3

<sup>76</sup> <http://ebooks.adelaide.edu.au/l/lang/andrew/homer/chapter11.html>, D.O. Hughes, From brideprice to dowry in Mediterranean Europe, in: M. Kaplan (Ed.), The Marriage Bargain: Women and Dowries in European History, Havorth Press, New York, 1985, pp.13–58, Accessed: 2011-16-02

<sup>77</sup> Shakespear W. The Tragedy of King Lear, R.Ābeltiņa, Dz.Fleija, Ā.Misāne, English and American Literature, Zvaigzne Publishing House Riga, 1978, pp.29

<sup>78</sup> Kaplan, Marion A. The Marriage bargain : women and dowries in European history New York : Harrington Park Press, 1985, pp. 17

<sup>79</sup> Kaplan, Marion A. The Marriage bargain : women and dowries in European history New York : Harrington Park Press, 1985, pp.5, <http://www2.kenyon.edu/projects/margin/beguine1.htm>, Sisters Between Gender and the Medieval Beguines by Abby Stoner, Accessed: 2011-09-  
<http://www.arcaini.com/ITALY/ItalyHistory/Italy12th17th/Italy12thto17th.htm>01, Italy 12th to 13th Century, Source:Microsoft® Encarta® Encyclopedia 2000, Encyclopedia Britannica

<http://faculty.arts.ubc.ca/asiwan/documents/dowry-jpe.pdf>, Anderson S, Why Dowry Payments Declined with Modernization in Europe but Are Rising in India, The Journal of Political Economy, Vol. 111, No. 2 (2003), pp. 269-310, Published by: The University of Chicago Press, Stable URL: <http://www.jstor.org/stable/3555204>, Accessed: 2010-16-11

adopted in patriarchal societies, after marriage have to stay and live together with parents, no longer saw the sense of building family wealth and became quite lazy.

At the same time daughters joined their husband's household and received a dowry. To tackle this huge issue, society had to reduce the dowry payment and review the tradition that the sons have to work and live with their parents after marriage.<sup>80</sup> It is worth mentioning the role of dowry in America's first president's George Washington's life - when a 26-year-old young man married a wife, the widow Martha Dandridge Custis (Washington). The new rich widow's dower - 6 thousand hectares of land and 150 slaves inherited from her brother's property, helped George Washington to become the richest person in Virginia and to build his political career on his way to the first U.S. presidential post.<sup>81</sup> Mostly in the Western world,

the late 19<sup>th</sup> century, early 20<sup>th</sup> century, is the time when the role of dowry faded. The only places where institution of dowry remains in the national law in Europe it seems to be in Latvia<sup>82</sup> and till 2006 – in France<sup>83</sup>. Not so long ago it was in Austrian<sup>84</sup> and Catalan civil codes. Until 2005 in the United States the dowry or "Marriage Portion" was included in Articles 2317- 2359 (VI Title, II Division) and regulated by the Louisiana's Civil Code (1870).<sup>85</sup> Louisiana's Civil Code from 2005 includes modifications, which speak of gifts that can be donated by a third party in relation to newlyweds. Today's "Marital Portion" is mentioned as the surviving spouse's share if the surviving spouse is in need. In this case the share may make a one-fourth of the inheritance. However, it cannot be considered as a dowry, but rather as a widow's share (see: Articles 2432 - 2437 of the Louisiana Civil Code<sup>87</sup>). In other states of USA the dowry had not been mentioned at all.

### The dowry nowadays

Living in Europe today is no longer imaginable without migration, which in turn has an impact on the integrity of society and brings up the diversity of modern Europe, including traditions of nations each immigrant group brings there. Thus, modern European marriages

<sup>80</sup> <http://www.scribd.com/doc/29970365/Women-of-the-Renaissance>, Women of the Renaissance, Margaret L. King, The University of Chicago Press, Chicago 1991, pg.50; <http://homes.chass.utoronto.ca/~siow/papers/dowry.pdf>, Why Dowries? Maristella Botticini and Aloysius Siow, February 2002, pg.3; <http://arno.uvt.nl/show.cgi?fid=4191>, Anderson S., Why Dowry Payments Declined with Modernization in Europe but Are Rising in India, University of British Columbia, EBSCO Publishing, 2003, Accessed: 2011-20-03

<sup>81</sup> <http://www.whitehouse.gov/about/presidents/georgewashington>, [http://findarticles.com/p/articles/mi\\_m0JIW/is\\_3\\_58/ai\\_n14932706/](http://findarticles.com/p/articles/mi_m0JIW/is_3_58/ai_n14932706/), Accessed: 2010-12-12, <http://www.firstladies.org/biographies/firstladies.aspx?biography=1>, [http://ru.wikipedia.org/wiki/Джордж\\_Вашингтон](http://ru.wikipedia.org/wiki/Джордж_Вашингтон), Accessed: 2010-10-10, <http://www.history.org/almanack/people/bios/biomwash.cfm>, Martha Dandridge Custis Washington, <http://marthawashington.us/exhibits/show/martha-washington--a-life/early-life/page-3>, Early Life, Courtship of Daniel Parke Custis and Martha Dandridge, Accessed: 2014-02-13

<sup>82</sup> Civillikums, <http://www.likumi.lv/doc.php?id=90223>, The Civil Law (www.vvc.gov.lv), Accessed: 2011-02-02

<sup>83</sup> [http://www.legifrance.gouv.fr/html/codes\\_traduits/code\\_civil\\_textA.htm](http://www.legifrance.gouv.fr/html/codes_traduits/code_civil_textA.htm), Accessed: 2010-10-26

<sup>84</sup> <http://www.ceflonline.net/Reports/pdf3/Austria.pdf>, Accessed: 2010-08-27

<sup>85</sup> <http://www.ceflonline.net/Reports/pdf3/Catalonia.pdf>, Accessed: 2010-08-27

<sup>86</sup> <http://www.archive.org/stream/civilcodeofstate00loui#page/312/mode/2up/search/313>, Civil code of the state of Louisiana, Accessed: 2012-05-05, see also: <http://www.law.lsu.edu/index.cfm?geaux=lcco.home&v=en&u=062#062>, <http://legal-dictionary.thefreedictionary.com/dowry>, West's Encyclopaedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc.; Accessed: 2011-02-02

<sup>87</sup> <http://www.law.lsu.edu/index.cfm?geaux=lcco.home&v=en&u=062#062>, Accessed: 2012-05-05

sometimes demonstrate that in order to help young women to procure the necessary items for the new life, dowry and the ransom are not forgotten despite the fact that in South East Asia today the dowry institution causes family tragedies. Many countries including India, China, Southeast Asia,<sup>88</sup> on the African continent countries like - South Africa, Tanzania, Ghana, Senegal, Rwanda, Kenya, Uganda<sup>89</sup>, Nigeria<sup>90</sup>, it is still not possible to get married without dowry or ransom<sup>91</sup>. The enormous impact of the role of dowry in public life today for individuals was shown by the Pakistani women interview in Euro news that were given in relation to the August 2010 summer floods and 6.3-point earthquake in Pakistan, India and

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Afghanistan on the 17<sup>th</sup> of September 2010 when in the context of disasters women were mostly worried about the loss of dowry and not for the fact that the earthquake killed their relatives, destroyed their shelter, any documents or other important common life things<sup>92</sup>. In some places the bride has to be bought by the groom from their parents, so it is in China, India, Thailand<sup>93</sup>, Burma, Indonesia<sup>94</sup>, Central Asia - Kazakhstan, Kyrgyz Stan, Uzbekistan, on the American continent for Peru indigenous people – Urarina<sup>95</sup>, the institution exists for the indigenous people of Amazon and Australian aborigines<sup>96</sup>, too. A contemporary Thai bride's ransom could reach as high as \$ 300,000 if the bride is beautiful, educated and from a considerable family. Thai bride's ransom usually consists of cash, gold and diamond rings, and is given to the bride's family to show the bride's parents, that the groom is wealthy enough to feed a young family, sometimes it is given as a wedding gift.

During the first half of January 2014, in Latvian public space appeared the message : " The tendency in England : immigrants make abortions expected to be girls."<sup>97</sup> The article gives an overview of the "Anglo Baltic News" published information that some ethnic groups in the UK are widely practicing illegal - selective abortion in order to avoid girls' birth, as a result, in those communities there are huge amount of "lost" girls. This is confirmed in England and Wales, and the number of these "lost" girls is between 1400 and 4700, with a reference to the articles from "The Independent". The Independent "publishes articles one after another, expert opinions and discussions<sup>98</sup> on this issue, stating that 2013 government's

<sup>88</sup> <http://factsanddetails.com/china.php?itemid=109&catid=4&subcatid=20#13>, WEDDINGS, CUSTOMS, CEREMONIES AND GIFTS IN CHINA, Accessed: 2011-08-02

<sup>89</sup> <http://ipsnews.net/africa/interna.asp?idnews=22462>, CULTURE-UGANDA: A Price Above Rubies Rachel Rinaldo, Accessed: 2011-08-02

<sup>90</sup> <http://www.enotes.com/bride-price>; The Bride Price | Introduction, Accessed: 2011-08-02

<sup>91</sup> <http://hubpages.com/hub/LoveForSale>, Love for Sale: Dowries and Bride Prices. Origin Of The Bridal Shower, Accessed: 2011-12-02

<sup>92</sup> <http://www.euronews.net/tag/natural-disasters>, Accessed: 2010.09.10

<sup>93</sup> [http://wn.com/bride\\_price](http://wn.com/bride_price), World news, Bride price, Accessed: 2011-10-02

<sup>94</sup> <http://www.econ.ubc.ca/asiwan/siwan-jep.pdf>; The Economics of Dowry and Brideprice. Siwan Anderson, Accessed: 2011-12-02

<sup>95</sup> <http://www.let.leidenuniv.nl/pdf/lucl/lwpl/2..2/olwaky.pdf>, Knut J. Olawsky, Urarina – Evidence for OVS Constituent Order, p.43, Accessed: 2011-08-07; <http://www.encyclo.co.uk/define/Urarina>, Accessed: 2011-07-02; <http://www.encyclo.co.uk/define/Urarina>, Accessed: 2011-07-02

<sup>96</sup> <http://saic.nativeweb.org/ayn/urarina.html>, New and Old Disease Threats in the Peruvian Amazon: The Case of the Urarina, Accessed: 2011-08-07

<sup>97</sup> <http://www.anglobalticnews.co.uk/lv/da%C5%BEas-lielbrit%C4%81nijas-etnisko-minorit%C4%81%C5%A1u-grupas-pla%C5%A1i-piekopj-neleg%C4%81los-abortus,Dažas-Lielbritānijas-etnisko-minoritāšu-grupas-plaši-piekopj-nelegālos-abortus>, Accessed: 2014-01-16

<sup>98</sup> <http://www.independent.co.uk/news/uk/crime/the-lost-girls-department-of-health-to-act-on-reports-of-illegal-abortions-by-gender-9062460.html?origin=internalSearch>, The lost girls: Department of Health to launch investigation into reports of illegal abortions, Cahal Milmo, Steve Connor, Thursday 16 January 2014;

<http://www.independent.co.uk/news/science/the-lost-girls-thousands-of-missing-girls-revealed-by-analysis-of-uks-2011-census-results-9059905.html>, The lost girls: Thousands of 'missing' girls revealed by analysis of UK's 2011 census results, Steve Connor, Tuesday 14 January 2014;

investigation has not revealed evidences that women living in the UK, but born abroad, make abortion in cases when the expected baby is a girl, and refers to the "The Independent" journalists search analyzing the same data from Office for National Statistics, which shows that among immigrant families the child sex ratios problem, however, exists.

British Columbia University in Canada associate professor Siwan Anderson and Debraj Ray professor of New York City university in 2013 published the study<sup>99</sup> which also indicated that during 90 – 92 in India there were "lost" about 25-50 million women, but over the past 20 years, made more than 10 million female selective abortions and pointed out that the reason for this problem lies in the declared topic here: matrimonial property - dowry de facto existence and gender discrimination in those communities. The similar problems caused by the existence of a dowry in both - China and India, are faced in "The Economist"<sup>100</sup> article "The worldwide war on baby girls". The article highlights that due to the fact that in China there is a one-child state policy and due to the fact that many families still are keeping the tradition to give the daughters dowry, millions of young couples after examining the expected child is a daughter, choose to kill them. The same is happening in India. Despite the fact that the Indian government has taken a series of measures to limit the use of prenatal diagnosis and prohibit the use of this method for the determination of the sex, selective abortion on sex is widely used. Still, both in China and northern India, despite the government's efforts, for every 100 girls born there are more than 120 boys born. At a substantial total population amount in these countries, this results in a number of problems because of the enormous amounts of unmarried, young men: an adult crime, human trafficking, sexual abuse, suicide rates which have a tendency of increasing. According to 2001 population census data of India for every 1,000 males there were 933 women, but in 2004 only 882 girls per 1,000 boys were born. India now announced that in such proportions each year they are missing 930,000 girls<sup>101</sup>. This fact is a tragedy and a danger which is confirmed in data published in the 2005 at India's National Crime Records Bureau:

every 3 minutes in India are committed one crime against a woman ,  
every 9 minutes is fixed cruel behavior against women,  
every 15 minutes, there is sexual molestation of women ,  
every 20 minutes - female rape,

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<http://www.independent.co.uk/news/science/the-lost-girls-it-seems-that-the-global-war-on-girls-has-arrived-in-britain-9059610.html>, The lost girls: It seems that the global war on girls has arrived in Britain, Steve Connor, Tuesday 14 January 2014;

<http://www.independent.co.uk/news/science/the-lost-girls-if-you-have-a-girl-you-feel-youve-let-your-husband-down-9059570.html>, The lost girls: 'If you have a girl, you feel you've let your husband down', Cahal Milmo, Tuesday 14 January 2014;

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<sup>99</sup> <http://ideasforindia.in/profile.aspx?id=41>, India's missing women by age and state, Siwan Anderson, Debraj Ray, 11 Jan 2013, <http://www.econ.nyu.edu/user/debraj/Papers/AndersonRay.pdf>, Review of Economic Studies (2010) Missing Women: Age and Disease, SIWAN ANDERSON University of British Columbia, DEBRAJ RAY, New York University, First version received July 2008; final version accepted December 2009, Accessed: 2014-02-04

<sup>100</sup> The Economist, The worldwide war on baby girls, March 4th 2010, Accessed: 2010-08-11

<sup>101</sup> <http://www.parliament.uk/documents/commons/lib/research/rp2007/rp07-041.pdf>; RESEARCH PAPER 07/41 2 MAY 2007 A political introduction to India, Accessed: 2011-05-01



every 23 minutes - the abduction of women ,  
 every 53 minutes, a woman suffers sexual harassment and  
 every 77 minutes, occurs a woman's death due to dowry <sup>102</sup>.

Despite the fact that in modern continental European countries, the dowry institute has almost vanished, the impact of Roman law on civil law system with some exceptions, such as UK, and the fact that Europe is home to a large number of immigrants, including a large Arab and Muslim community migrants, in which a dowry functioning is a traditional in their countries of origin, the role and impact of it, is even more important than it might be seen.

The other problem lies in a different reason also linked with dowry: the German Zentral Institute of Islamic Archive ( dt. Zentral -Institut Islam - Archiv - Deutschland) gives data that in modern Europe there are more than 53.7 million Muslims, 16 million of whom live in the European Union <sup>103</sup>. Thus, if we take into account the EU's total estimated population of 497 million on the first January 2007 <sup>104</sup> and compared it with the number of Muslims in the EU, we can conclude that the EU is a large enough number of people living in the EU, wanting domestic legislation to be introduced at Sharia traditions, including divorce in which the wife must be provided with a dowry. In the interview, published at "Financial Times" article "First Person : Dr. Suhaib Hasan". <sup>105</sup> Dr . Suhaib Hasan (according to Islamic law he is the Islamic Sharia Council judge in London from 1982) helps UK British Muslim community with issues related to Islam such as divorce. Only Criminal cases they agree to be let to the jurisdiction of the British courts. The Islamic Sharia Council wants to ensure that British law regarding the status of the Sharia Council would be changed and the Muslim community on legal grounds must be given responsibility for this area. This result cannot be left unattended because it has continuation in another publication in "The Economist " <sup>106</sup>. The article shows that 40 % of British Muslim origin would liked the idea of the application of Sharia in the UK. Respondents indicated that, contrary to some hysterical speeches, no one advised Islamic justice system in any of the Western democracies, that's why there is no reason to be afraid of it. Nobody has objections if two citizens deal with commercial disputes in the normal manner. However, as in the English-speaking part of the world, there has long been a special arbitration solving commercial disagreements, and their services are required, this only demonstrates the objection of the possibility and necessity in the Muslim practical life for Sharia law. British society has a reasonable concern that Muslim women will be turned to arbitration not of their own free will, so using an Islamic divorce procedures they may be less favorable, as in the national legislation where their rights would be better protected.

In March 2012, the German court have a case where a Turk 's father put a dispute in to the court calling for his sons divorced wife to return the gold jewelry € 12,000 (twelve thousand euros) value, which the woman was given as a dowry, because in two months after the wedding, she got divorced. The judge ruled that a woman can keep the jewelry as dowry because dowry lets the woman be financially independent after divorce, and there is no matter how long the marriage would have lasted. The judge noted that their decision was based on the Turkish court ruling knowledge for such cases decided under Sharia law, which

<sup>102</sup> [http://www.crowdvoice.org/sexual-assault-in-india?gclid=CKeB6dvXwLoCFYdf3god\\_RIAAA](http://www.crowdvoice.org/sexual-assault-in-india?gclid=CKeB6dvXwLoCFYdf3god_RIAAA), Sexual Assault in India, crime clock, Accessed: 2013-12-10

<sup>103</sup> <http://islamineurope.blogspot.com/2007/05/number-of-muslims-in-europe.html>, Accessed: 2010.05.08

<sup>104</sup> <http://islamineurope.blogspot.com/2007/05/number-of-muslims-in-europe.html>, Accessed: 2010.05.08  
[http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-SF-08-081/EN/KS-SF-08-081-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-08-081/EN/KS-SF-08-081-EN.PDF), Accessed: 2010.05.08

<sup>105</sup> <http://www.ft.com/cms/s/2/9064931e-a0f6-11de-a88d-00144feabdc0.html>, Financial Times Limited , 2009. gada 19. septembrī, Accessed: 2010-09-10

<sup>106</sup> The Economist, Islamic law and democracy, Sense about sharia, October 14th 2010, Accessed: 2010-09-10

determines to maintain divorced wife's dowry, thus shielding her from poverty. As an additional reason, which the rule stated, was that it fully complies with the requirements of the German constitution and eliminates poverty. Commenting on this outcome of the case, the lawyer does not exclude that a different decision would be expected if a similar dispute occurred not with the Turks, but among the Germans<sup>107</sup>. Another case from Sweden: every year the Swedish authorities receive hundreds of requests for the registration of marriages between persons who are still within the meaning of Swedish law - children: "It's about people who have arrived to Sweden, either on arrival or later, one of them already is a Swedish citizen, and the other a foreigner, and they ask to register them as spouses. According to the Swedish National Youth Council report, in Sweden at least 8,500 of children exposed to the risk of early marriages, often with close relatives and even before reaching the age of 12, which indicates the increasing role of the Sharia here, and like the above situations in the UK, also it is seen increasing pressure and efforts to affect the existing legal order of Sweden. Thus, any Arab citizen, in accordance with Sharia law in Hebron (the occupied Arab city in Israel) got married to a girl, who at the time of marriage hadn't reached the age of maturity. Returning to Sweden this Arab citizen, wanted that his marriage would be recognized in Sweden. The Swedish Tax Agency (Skatteverket) requested from the person's marriage certificate, that the marriage was at the time when the girl was not 18 years old. Sweden Court decided that a 17-year – old once married under the Sharia, in Sweden cannot be recognized as valid. The Swedish Supreme Administrative Court (Högsta förvaltningsdomstolen) set aside the lower court's ruling, stating that the case of Sweden cannot recognize the marriage to be entered into force, as to foreign marriages registered in Sweden must be clear and follow the Swedish marriage law conditions, refusing girls marriage registration in Sweden. Yet this is a clear signal that the Swedish legislation, in comparison with Sharia law, is in preference.<sup>108</sup>

### Bottom of Form

European integration has been and is the legal integration. One must be able to see a causal link and be able to predict the life-changing potential and its impact on society in future. Both Germany and Sweden in recent years has doubled the number of Muslims, who have an impact on society as a whole, as these migrant groups are not isolated from the rest of society.

<sup>107</sup> <http://www.familysecuritymatters.org/publications/detail/turks-in-germany-are-a-time-bomb>, Family Security Matters, Turks in Germany are a Time Bomb, by DR. SAMI ALRABAA, March 22, 2013.

<http://www.destentor.nl/2.2545/buitenland/duitse-rechter-past-sharia-toe-1.239909>, Duitse rechter past sharia toe, de Stentor, 26 maart 2012

<http://www.internationalfamilylawfirm.com/2012/10/law-panel-wants-anti-dowry-law-toned.html>, Jeremy D., International Family Law, Thursday, Law Panel Wants Anti-Dowry Law Toned Down, October 04, 2012

<http://www.emirates247.com/news/region/girl-wins-dowry-case-against-her-father-2011-10-06-1.422195>, Girl wins 'dowry' case against her father, Emirates, 24/7, October 06, 2011

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Venkatesan J., Casual, wholesale reference to in-laws won't justify dowry case: Supreme Court, The Hindu, New Delhi, October 22, 2012,

Patnaik I., Women are misusing Dowry Act, rules court, The Indian Express, Wed Feb 03 2010, Patnaik I., Nisha Sharma dowry case: Court acquits all accused, The Indian Express, New Delhi, Thu Mar 01 2012,

<http://www.indiankanoon.org/docfragment/698149/?formInput=cases%20on%20dowr%20fromdate:1-2010%20todate:31-12-2010>, cases on dowry, Shahid Riza @ Raju vs State on 30 September, 2010

<http://post.jagran.com/dont-implicate-family-members-in-dowry-case-merely-on-fir-sc>, 1351245209, Don't implicate family members in dowry case merely on FIR:SC, Jagran Post, Latest News from India News Desk 26 Oct 2012, Accessed: 2013-05-25

<sup>108</sup> <http://www.sydsvenskan.se/sverige/tvangsaktenskap-ska-utredas/>, Tvångsaktenskap ska utredas, 21 maj 2012, Accessed: 2012-05-25

The above mentioned examples show that society and their respective systems of law, whatever they might be, represent and confirm existing arrangements, and are expressed in the order of their life. In any case, it should be kept in mind that for the development of democratic society, in accordance with the rules and the principles of law, it is possible to reach this only when the rules are adopted as the concept of democracy requested in an appropriate way and they are essentially fair.

Considering the institution of dowry at various historical stages of its development, it seems obvious that at all times, it was *a priori* the Institute for Women, as the less important, poorer, incapable, weaker element of the society requiring support, and thus indicates the public's attitude and awareness of the equality issues, even to this present day, on the one hand, but on the other hand - it should make men feel uncomfortable and discriminated.

### **The Dowry and Human Rights**

Noting as well that the UN General Declaration of Human Rights (1948)<sup>109</sup> affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the fundamental rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex (Article 1).<sup>110</sup> Although most of societies at some point in their history have been

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characterized by marriage payments, in the 21<sup>st</sup> century we can no longer live in a society where sex is seen as a sign of one of the reasons to legitimise different rights and even restrictions - both formally and informally. In a case of dowry, even for the reason of fairness, it should be understood and assessed how and why people behave differently. Theoretically, dowry, as a pre-mortem inheritance, was set up to protect women through the property given as dowry; however, nowadays this institution, on the one hand, seems to have vanished, while on the other - it has transformed and become distorted and degraded, thus losing its original meaning. This requires a deeper analysis beyond national legislation to ensure the legal principles for the mandatory basic human rights are followed, as well as to establish solutions that include legal remedies and much more, because only through exploring and comprehending the development of processes it is possible to achieve true democracy where the human rights principles are respected. Only understanding, which is based on knowledge, opens up the next window - *to respect, to protect, to fulfil*<sup>111</sup> human rights in order to minimize the existing contradictions and differences between various groups or communities and possibly at times even to slumber destructive potential thereof, while considering how to safeguard inherent characteristics of the identity of these groups and ensure tolerance to everyday social life in order to get along in a diverse cultural, and religious environment of one or other group having different characteristics on the common grounds of humanity and equal treatment of all, regardless of gender, ethnic, racial origin or religious affiliation, without going into the conflict of interest on some bases or other. Inadmissibility of discrimination is and must be an essential element of any national law. The definition and characteristics of it vary in different countries and in national and international legal instruments. If human rights are meant to be implemented without any discrimination of any

<sup>109</sup> <http://www.ohchr.org/EN/UDHR/Pages/introduction.aspx>, the Declaration proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A (III), Accessed: : 2012-05-06, see also: <http://www.britannica.com/EBchecked/topic/618067/Universal-Declaration-of-Human-Rights-UDHR>>, Universal Declaration of Human Rights (UDHR), *Encyclopædia Britannica. Encyclopædia Britannica Online*. Encyclopædia Britannica Inc., Accessed: : 2012-05-06

<sup>110</sup> <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1>, Accessed: 2011-07-08

<sup>111</sup> *Indivīda tiesības vs sabiedrības drošība - kāds ir demokrātisks balanss?*, *Sabiedriskās politikas forums* "Brīvība v. drošība: kā demokrātiski atbildēt draudiem?", 11th August 2005, E.Levits Publisher: <http://www.Politika.lv> 23rd August 2005, Accessed: 2005-11-08

kind, then what is the actual role of the institution of the dowry in Latvian CL for today? As seen, in the past, it had a function of supporting a woman as a vulnerable member of the family; in some cases it had a protective function of marriage. Currently, the preservation of the institution of dowry in continental Europe's legal system looks a rather archaic phenomenon, not complementing the fundamental human rights.

### **Conclusion**

Today dowry is mostly transformed as a gift given in connection with marriage. Therefore, Latvia would have to consider this direction in order to achieve the real implementation of human rights in daily life and make changes in Civil Law to comply with Constitution of Latvia.

On the one hand it seems not so much a legal as a political question, therefore, it must be considered whether the current EU member states of the various target groups and communities are fundamentally incompatible and inconsistent, or not. On the other hand, there always existed issues of national and community legislation in the various rolling processes by the interaction between them.

In this context, we must agree to the Russian professor, J. Tihomirova who said in the book "Upravlenie na osnove prava"<sup>112</sup> that the findings of the legal nature of public affairs management rules, values and other changes during the period, where the author writes that the law itself is an internal change of time.

There is no doubt that European integration has been and is the integration of the right which changes with the time, but it should be based on shared values and understanding, including history. On the one hand at the European context, now there is more or less

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<sup>112</sup> Тихомиров Ю., "Управление на основе права", Москва, 2007, pg.64

common understanding of the institution of marriage, spouses' legal or contractual property rights, as well as marital property or legal separation of property, with some country-specific rules. On the other hand there occurs a very legitimate question, why dowry still, if granted, is only for women.

Historical understanding and analysis is also a common and sustainable growth, sustainable development issue for the European space. Therefore, there is a the need for a common European awareness and identity formation, a common approach to certain problems in the search of our joint European home.

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